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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/511,582	02/23/2000	Jan Raa	CU-2140 TJK	3180

26689 7590 04/05/2002

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EXAMINER
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STUCKER, JEFFREY J

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 04/05/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No. \_\_\_\_\_

Applicant(s) \_\_\_\_\_

Examiner \_\_\_\_\_

Group Art Unit \_\_\_\_\_

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 3/8/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-8413-25 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-8413-25 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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This Office Action is in response to the amendment filed 3/8/02. Claims 1-8 and 13-25 are pending and rejected.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The new abstract of the disclosure has is acceptable and has been entered.

Claim 13 is objected to because gastrically is misspelled.

The rejection of claims 1, 7, 15, 21, and 23 under 35 U.S.C. § 112, second paragraph, is withdrawn in part and maintained in part.

The rejection of claim 1 as being indefinite by the wording "that enhances the effect medicinal substances" **is withdrawn** in view of the amendment to the claim.

The rejection of claim 25 as being indefinite because the singular article before "nasal" does not agree with the plural "drops" **is withdrawn** in view of the amendment to the claim.

The rejection of claims 7, 15, 21, and 23 as vague and indefinite because it is not clear how much time can elapse before administration of the adjuvant after the administration of "the

substance" would fall within the boundaries of the instant claims **is maintained**. Applicant argues only that one would be aware of the temporal aspects related to administering the adjuvant and substance which in itself is unclear. Does the scope of the invention only extend to the time it takes for a nurse to change from a medicine cup of adjuvant to a cup of substance? Ten minutes? Twenty four hours? How is one to know whether he is infringing on the claimed invention?

The rejection of claims 2-8, 13-16 and 18-25 as being objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim is withdrawn in part and maintained in part.

The rejection of claims 8 and 25 for not further limiting the independent claims **is maintained** because the new limitation of "are used" is an intended use and does not describe or limit the structure of the composition.

The rejection of the claims because the route of administration, timing, antigen, etc., are intended uses and do not describe or limit the structure of the claimed composition **is withdrawn** in view of the amendment to the claims.

Applicant's comments concerning the objection to claims 2 and 3 is noted but the "substance" of the dependant claims does not

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have antecedent basis in the independent claims which has "substances".

The rejection of claims 1, 4-8, and 13-16 under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for viral vaccines, does not reasonably provide enablement for non-vaccine medicinal substances is maintain. Applicant has not argued the point of the rejection.

The rejection of claims 1-8 and 13-25 under 35 U.S.C. § 102(b) as being anticipated by Benach et al. **is withdrawn** in view of applicant's arguments that the reference does not specifically teach the same structure. Though the source of the glucan is the same as the instant application, the reference does not teach how the glucan was purified.

The rejection of claims 1-8 and 13-25 under 35 U.S.C. § 102(b) as being anticipated by Takahashi et al. **is withdrawn** in view of applicant's arguments.

The rejection of claims 1-8 and 13-25 under 35 U.S.C. § 102(b) as being anticipated by Rorstad et al. (5,401,727) **is maintained**.

Applicant argues that Rorstad et al. teaches a process for stimulating the immune system of aquatic animals and a process of preparing glucan from yeast. Applicant argues that the instant invention is a mucosal adjuvant that enhances the effect of medicinal substances administered onto mucosal surfaces and is not related to the use of glucan as a prophylactic medicament for aquatic animals but rather as an adjuvant to enhance the effect of a composition applied to mucosal surfaces.

Applicant's arguments have been fully considered but are not deemed to be persuasive. The instant compound is the same as the prior art compound as the instant glucan is produced by the same method. See page 13 of the instant specification. Therefore, the adjuvant is the same compound. The method of applying the adjuvant to mucus membranes is also anticipated by the reference as the patent teaches administering this to aquatic animals which have mucus membranes.

No claims are allowed.

**THIS ACTION IS MADE FINAL.** See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

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A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Papers related this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG (November 15, 1989).

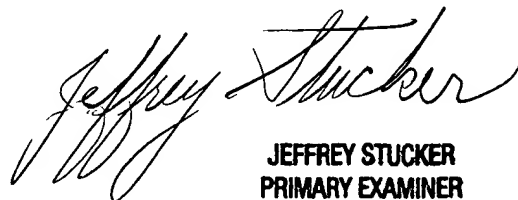
The Group 1600 Fax numbers are: (703) 308-4242 and (703) 305-3014.

Unofficial communications may be faxed to: (703) 308-4426.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Stucker whose telephone number is (703) 308-4237. The examiner can normally be reached Monday to Thursday from 7:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (703) 308-4027.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

  
**JEFFREY STUCKER**  
**PRIMARY EXAMINER**